



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

**JUL 1 - 2014**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5966 1055**

Mr. Jacob S. Tawil, P.E., Commissioner  
Department of Public Works  
City of Middletown  
16 James Street  
Middletown, New York 10940-1587

Re: Amended Administrative Order CWA-02-2014-3049  
City of Middletown  
SPDES Permit No. NY0026328

Dear Commissioner Tawil:

Please find enclosed an Amended Administrative Order ("Amended Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to the City of Middletown ("Middletown") pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. §1319. This Amended Order amends EPA Administrative Order CWA-02-2013-3058 ("2013 Order"), which was issued to Middletown on September 26, 2013, for violations of the CWA for failure to fully comply with EPA's Request for Information pursuant to Section 308 of the CWA. The 2013 Order also includes a schedule requiring Middletown to submit an Industrial Pretreatment Program ("IPP") to EPA for approval. The Amended Order requires Middletown to submit the IPP to EPA in accordance with the action plan that it provided to EPA on May 2, 2014, and that was approved by EPA on May 8, 2014.

Enclosed are two originals of the Amended Order. Please acknowledge receipt on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the Amended Order may subject Middletown to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. §1319.

If you have any questions regarding the enclosed Amended Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,

A handwritten signature in black ink, appearing to read "D. LaPosta".

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joseph DiMura, NYSDEC (w/enclosure)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2  
290 Broadway  
New York, New York 10007-1866

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IN THE MATTER OF	:
	:
City of Middletown	:
Department of Public Works	:
16 James Street	:
Middletown, New York 10940-1587	:
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SPDES Permit No. NY0026328	:
	:
Proceeding pursuant to §309(a) of the	:
Clean Water Act, 33 U.S.C. §1319(a)	:
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AMENDED ADMINISTRATIVE ORDER  
CWA-02-2014-3049

This Amended Administrative Order amends the Order CWA-02-2013-3058 ("2013 Order").  
**Attachment 1.**

**STATUTORY AUTHORITY**

1. This Amended Administrative Order is made pursuant to Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.
2. Section 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. §1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

**FINDINGS**

The following Findings are added to the Findings of Violation in the 2013 Order:

1. Paragraph 9 is added as follows:

"On February 28, 2014, the City of Middletown submitted its final comprehensive Headworks Analysis Report ("Final Report") in accordance with the 2013 Order. Due to an incomplete submission, EPA requested that the City of Middletown resubmit the Final Report again. EPA provided the City of Middletown extensive

comments about what to include in the resubmission by phone call on March 4, 2014 and by e-mail on March 7, 2014. The City of Middletown submitted the resubmission of the Final Report, which EPA received on March 31, 2014.”

2. Paragraph 10 is added as follows:

“By letter dated April 7, 2014, the City of Middletown requested an extension for its submittal of: (1) an Industrial Pretreatment Program (“IPP”) submission to the City of Middletown’s legislative body for approval from May 1, 2014 to July 1, 2014, and (2) a complete IPP submission for EPA approval from June 16, 2014 to August 15, 2014.” **Attachment 2.**

3. Paragraph 11 is added as follows:

“By letter dated April 17, 2014, EPA denied the City of Middletown’s request for an extension. However, EPA did extend the May 1, 2014 milestone to May 15, 2014 and stated that any additional extensions will be based on EPA’s determination that the City of Middletown is showing good faith effort to comply with the requirements of the 2013 Order.” **Attachment 3.**

4. Paragraph 12 is added as follows:

“On April 24, 2014, EPA and the City of Middletown met to ensure that Middletown will provide a complete submission of the IPP. The parties agreed to have the City of Middletown submit an action plan detailing internal deadlines as well as recommend new submission dates for: (1) the IPP submission to its municipal legislative body for approval, and (2) the submission of a complete IPP for EPA approval.”

5. Paragraph 13 added as follows:

“On May 2, 2014, the City of Middletown submitted an action plan to EPA. By e-mail dated May 8, 2014, EPA approved the action plan. EPA agreed to the following new submittal deadlines: (1) By August 29, 2014, submit the IPP submission to the City of Middletown’s legislative body for approval, and (2) By October 31, 2014, submit a complete IPP submission for EPA approval. EPA also agreed to the City of Middletown submitting a final program and procedures, SOPs, forms, permit templates, and final sewer user ordinance by July 25, 2014.” **Attachment 4.**

### **SECTION 309(a)(3) COMPLIANCE ORDER**

1. Paragraph 2.F. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **August 29, 2014**, the City of Middletown shall submit an Industrial Pretreatment Program submission to its municipal legislative body for approval.”

2. Paragraph 2.G. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be replaced with the following:

“By **October 31, 2014**, the City of Middletown shall submit to EPA a complete Industrial Pretreatment Program submission for approval.”

3. Paragraph 2.J. of the Section 309(a)(3) ORDERED PROVISIONS Section of the 2013 Order shall be added with the following:

“By **July 25, 2014**, the City of Middletown shall submit a final program and procedures, SOPs, forms, permit templates, and final sewer use ordinance for review.”

### **GENERAL PROVISIONS**

1. Any documents to be submitted by Respondent as part of this Order shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. The Respondent shall have the opportunity, for a period of twenty (20) days from the date of receipt of this Order, to confer, regarding the Ordered Provisions, with the following designated Agency representative:

Doughlas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway - 20th floor  
New York, NY 10007-1866  
(212) 637-4244

3. Respondent may seek federal judicial review of the CWA Section 309(a)(3) Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§701-706.
4. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order

shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.

5. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have violated the CWA as described above and failed to comply with the terms of the Compliance Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Compliance Order.
6. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
7. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: 7/1/14

Signed: 

\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2  
290 Broadway  
New York, New York 10007-1866

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**IN THE MATTER OF** :  
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Department of Public Works : AMENDED ADMINISTRATIVE ORDER  
16 James Street : CWA-02-2014-3049  
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SPDES Permit No. NY0026328 :  
 :  
Proceeding pursuant to §309(a) of the :  
Clean Water Act, 33 U.S.C. §1319(a) :  
-----X

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an authorized representative of the City of Middletown,  
with the title of, \_\_\_\_\_, do hereby acknowledge the receipt of copy of the  
  
ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2014-3049.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_